

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Johnny Davis, # 192259,

) C/A No. 2:05-0016-CMC-RSC

Petitioner,

v.

OPINION AND ORDER

**Collie Rushton; Warden,
McCormick Correctional
Institution (McCI); South
Carolina Department of
Corrections; State of South
Carolina; and Henry McMaster,
Attorney General for South
Carolina,**

Respondents.

This action is before the court pursuant to a petition for *writ of habeas corpus* under 28 U.S.C. § 2254. The *pro se* Petitioner is an inmate at McCormick Correctional Institution of the South Carolina Department of Corrections where he is serving concurrent terms of 20 years for arson, life imprisonment for burglary, and 10 years each on six counts of assault with intent to kill. Respondents filed their return and a motion for summary judgment. Petitioner filed a response in opposition to the motion for summary judgment.

In accordance with the court's order of reference and 28 U.S.C. § 636(b), this matter comes before the court with the Report and Recommendation of United States Magistrate Judge Robert S. Carr. The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific

objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b).

Based on his review of the record, the Magistrate Judge recommended that Respondents' motion for summary judgment be granted because the Petition is untimely. The Magistrate Judge advised Petitioner of his right to file objections to the Report and the possible consequences if he failed to do so. Petitioner filed a motion for an enlargement of time within which to file objections together with his objections on September 23, 2005. The court has considered the objections.

The court has carefully reviewed the Petition, the motion and response, the record, the applicable law, the Report and Recommendation of the Magistrate Judge, and the objections by Petitioner, and finds that Petitioner's objections are without merit. The court agrees with the recommendation of the Magistrate Judge. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted and incorporated in full by reference. Therefore, Respondents' motion for summary judgment is **GRANTED** and the Petition is **DISMISSED** *with prejudice* as untimely.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
October 4, 2005

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